



DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1738 and 1739

[Docket No. RUS-19-Telecom-0003]

RIN 0572-AC46

Rural Broadband Loans, Loan/Grant Combinations, and Loan Guarantees

AGENCY: Rural Utilities, USDA.

ACTION: Final rule; confirmation and response to comments.

SUMMARY: The Rural Utilities Service (RUS or Agency), an agency in the United States Department of Agriculture (USDA) Rural Development Mission area, published an interim rule with comment in the **Federal Register** on March 12, 2020, to amend its regulation for the Rural Broadband Program, previously referred to as the Rural Broadband Access Loan and Loan Guarantee Program, to implement the Agricultural Act of 2018 (the 2018 Farm Bill). Through this action, RUS is adopting the interim rule as it was published and providing responses to the public comments received.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Laurel Leverrier, Assistant Administrator; Telecommunication Program; Rural Development; U.S. Department of Agriculture; 1400 Independence Avenue SW; Room 4121-S; Washington, DC 20250; telephone 202-720-3416, email laurel.leverrier@usda.gov. Persons with disabilities or who require alternative means for communication should contact the USDA Target Center at 202-720-2600.

SUPPLEMENTARY INFORMATION: On December 20, 2018, under the Agricultural Improvement Act of 2018, Pub. L. 115-334 (2018 Farm Bill), Congress made significant improvements to the program, most notably by furnishing grant assistance to reach the most

underserved rural areas lacking broadband access. The Agency published an interim rule with comment on March 12, 2020 (85 FR 14393), to implement those required statutory changes.

The 60-day comment period ended on May 11, 2020. Comments were received from 16 respondents. Respondents included a funding institution, telecommunications and satellite associations and providers, businesses, and a private citizen. Four of the 16 respondents did not offer comments that were responsive or conducive to improving the interim rulemaking. Below are the comments received from the 12 remaining respondents and the Agency's responses:

Respondent 1: "The respondent is a longtime supporter of government programs that bring better broadband access to all Americans. Our members support closing the digital divide through reduced regulatory barriers and opening additional government funding opportunities for companies to invest in wireless and wireline deployments of broadband infrastructure. Therefore, the respondent encourages RUS to consider all forms of broadband deployment (both wireless and wireline) when evaluating applications for the Rural Broadband Program funding. By expanding the scope of RUS's program funding it will allow for the economy to continue to grow, provide a technology neutral environment to identify the best solutions to have broadband access to rural communities, and follow Congressional intent to expand the RUS program to utilize technology that incorporates television white spaces (TVWS). Therefore, it is important that RUS activate TVWS in addition to wireline broadband for the United States to support the present and future of internet of things (IoT) services."

Agency response: We appreciate your concern. The broadband program is a technology neutral program and wireless technology along with wireline technology is eligible for funding consideration as long as the overall application meets the eligibility requirements of the program.

Respondent 2: The interim rule should be modified to clarify that the "associated loan" component of the grant could be provided by a private funding source. Regardless of whether the loan portion of the grant/loan combination comes from RUS or a private lender, RUS should consider adding alternative forms of credit support. Since the statutory and regulatory framework

allows RUS the discretion to determine appropriate security arrangements, respondent believes that a letter of credit alternative should be permitted for those systems that have repaid and no longer borrow from the Government (“Non-Government Borrowers”). The published interim final rule does not explain how RUS would calculate the fees, and respondent encourages the agency to elaborate on the expected method of calculating the fees in the final rule.

Agency response: The requirement to apply for an RUS loan in order to receive associated grant funding is a statutory requirement and cannot be modified at this time. Concerning the security arrangements for an RUS loan, applicants may propose alternate forms of collateral but should be prepared to enter into security arrangements as detailed in the regulation.

Respondent 3: “Please do not forget the micro deserts. Broadband is available two houses from me but they will not extend to me on my farm. I rely on a hotspot that doesn't always work, and never gets more than about 4m BPS download and less than one upload and that's with an expensive booster. I have to go to town to update my computer. Our cell signal is not good.”

Agency response: The Agency understands your situation. Applicants determine the service areas that they are requesting financing for and the Agency requires that all premises in the proposed funded service must be capable of receiving the proposed broadband service.

Respondent 4: Programs can only reach their highest potential if they adhere to the principles for which the respondent has consistently advocated: a focus on dedicating funding to bring broadband to truly unserved areas in the most cost-effective way possible, and a commitment to ensuring a fully transparent process so that all providers can ensure that scarce funding is not allocated to already served areas.

Agency response: The Agency will analyze industry trends and set the broadband eligibility speeds accordingly to ensure that areas with inadequate broadband service can receive

improved broadband service comparable to broadband service that is being provided in non-rural areas.

Respondent 5: “Significantly reduce the environmental reporting requirements in the application. Remove location and network specifics regarding Non-funded Service Areas (NFSAs) and Unadvanced Prior Loan Fund (UPLF) areas. Allow non-contiguous boundaries for NFSAs. Points associated with schools and libraries should be handled differently. The requirement that 100% of location in PFSA [proposed funded service area] be unserved should be relaxed when applying for 100% grants. Requiring a blanket first lien on all assets (when a loan component was included) eliminated many potential applicants who use other lending sources. Do not require applicant to provide subscriber penetrations per serving area. Calculation of depreciation expense on grant funded assets should be eliminated or should have the ability to be manually adjusted. Environmental questionnaire (EQ) should be similar to EQ for RUS Infrastructure loans. Allow adequate time for application preparation. Definition of Unserved should match the FCC [Federal Communications Commission] definition. Eliminate requirement to list fiber sizing on network diagrams. There are also several enhancements we would like to see with the application portal.”

Agency response: The application process and system have been designed to ensure that all regulatory/statutory requirements are met and that the proposed system is both financially and technically feasible. The information requested is essential in making these determinations.

Respondent 6: “Consistent with the intent of the 2018 Farm Bill, section 1738.101(a)(1) should make it clear that applicants are eligible for grant funding if they are pairing the grant with a loan from a third-party, not just a loan from RUS. Similarly, the discussion of grants for development costs in section 1738.101(d) should include broadband loans from third parties, not just RUS broadband loans.

- The definition and discussion of the “Broadband lending speed” should be modified to clarify that the initial Broadband lending speed under these programs is “25/3 Mbps fixed

terrestrial” and clarify the discussion of eligible service area to make it clear that initially any area with anything less than “25/3 Mbps fixed terrestrial” is eligible while prioritizing areas that lack access to at least 10/1.

- RUS should emphasize that mobile and satellite service will not be considered in determining eligibility, that RUS funding will not be provided to mobile service, but rather for high-capacity backbone to connect households and premises, and also to support wireless sites.

- RUS should clarify that, if there are applications for low density areas, RUS will exercise its discretion in determining the mix of grants and loans by using more of the designated funds in the form of grants and targeting such grant funding to lower density areas.

- The standards set forth in section 1738.101(b) for determining density should be based upon household density, not population density.

- RUS should allow matching funding, whether in the form of cash or loan funds, to be spread over the built-out period, rather than fully expended upfront before grant funding can be used. And loan/grant combo awardees should be allowed to draw equally from loan and grant funds rather than expend loan funds before accessing grant funds.

- For these programs, RUS should continue with the competitive market analysis used in ReConnect program, rather than the heightened requirements contained in the IFR [interim final rule].

- RUS should modify the treatment of challenges to applications by providing the applicant with access to the challenge and given a chance to respond within 30 days.

- In cases where issues raised in a challenge can be addressed by minor modifications to the application, RUS should allow applicants to do so.

- We encourage RUS to clearly state in the Application what the applicant must report and provide regarding its structure to increase its flexibility regarding partnerships (for example, not requiring one partner to be designated “lead applicant”).

- Regarding fidelity bond coverage of 15% of the loan or loan/grant amount, RUS should permit a letter of credit in lieu of a fidelity bond and should allow either mechanism to be reduced as the awardee meets or exceeds build-out milestones or obligations.

- We also ask RUS to clarify the effective date of IFR and clarify that the RUS letter to the applicant on fund availability is the event that marks the beginning of the five-year build-out period.

- Finally, we ask RUS to explain how lender fees for loan guarantees would be calculated and how RUS would use the proceeds from those fees.”

Agency response: Pairing grant funding with an RUS loan is a statutory requirement and cannot be modified at this time.

The broadband lending speed is designed to change with the ever-increasing bandwidth requirements that the public requires. The Agency will evaluate the broadband lending spend each time that a funding announcement is published and set this requirement accordingly.

The broadband program is technology neutral and any technology that can meet the broadband lending speed is eligible for consideration.

The amount of grant funds and the associated density calculations that can be applied for are statutory requirements and cannot be changed at this time.

The agency will consider the recommendation to spread out matching requirements over the construction period but at this time, the requirement will remain that matching funds be expended first.

Through the Public Notice Response process, the Agency will conduct on-site review of the proposed service area to determine if adequate broadband exists. If an area of the proposed funded service area is found to be ineligible, the Agency will work with applicants to modify the proposed service area accordingly.

Once an offer of an award is extended to an applicant, the 5-year construction period starts once all closing conditions are satisfied and funds become available to the awardee.

At this time, the Agency has not determined how fees associated with a loan guarantee will be calculated. Once this process has been fully determined, the Agency will conduct outreach explaining the process.

Respondent 7: As demonstrated by respondent's successful deployments in rural America and around the world, excluding satellite from the definition of broadband is arbitrary and would unjustly penalize operators that use satellite in whole or in part to provide the same services as exclusively terrestrial operators, with no perceivable difference in customers' experiences. In contrast, enabling the inclusion of satellite connectivity in RUS's rural broadband funding programs would empower applicants to bring service to the most rural areas of the United States using a combination of satellite and terrestrial deployments. Respondent urges RUS to adopt technology-neutral standards without an arbitrary definition of broadband to ensure that applicants for RUS funding have the option to integrate cost-effective and high-performance satellite broadband technologies into their networks. At the very least, RUS should clarify that its definition of broadband only applies to last mile connectivity and does not seek to limit other non-terrestrial network components used to reach remote rural areas.

Agency response: To ensure that that all rural areas have sufficient bandwidth, the Agency will evaluate the eligibility and construction requirements every time a funding announcement is published. The bandwidth for both eligibility and construction will be set to ensure that all rural Americans have access to sufficient bandwidth. Applicants must ensure that all households in the proposed funded service area can receive the minimum bandwidth requirements at the same time.

Respondent 8: The rule proposed by RUS excludes satellite Broadband from aspects of its grant programs, while the 2018 Farm Bill did not exclude satellite operators who otherwise meet the requirements of RUS' assistance programs from participating in these programs.

Satellite broadband services should not be excluded from the determination of whether proposed project areas are already served. Accordingly, RUS should clarify that satellite providers are eligible to participate in these important programs and adopt technology neutral criteria. Wrongly excluding satellite—or even failing to remove this ambiguity—will greatly undermine RUS’s ability to achieve its goals of increasing economic opportunity in rural America by supporting broadband infrastructure deployments that will provide affordable, high-quality connectivity to rural communities.

Agency response: To ensure that that all rural areas have sufficient bandwidth, the Agency will evaluate the eligibility and construction requirements every time a funding announcement is published. The bandwidth for both eligibility and construction will be set to ensure that all rural Americans have access to sufficient bandwidth. Applicants must ensure that all households in the proposed funded service area can receive the minimum bandwidth requirements at the same time.

Respondent 9: With its Starlink satellite system, respondent seeks to provide high-speed broadband worldwide, and specifically to remote and rural areas that are the most unserved. Although respondent has made no decision to participate in any program administered by RUS or any other Federal or state broadband program, respondent opposes any proposals that would arbitrarily exclude next-generation satellite systems from the definition of broadband. Broadband should be defined by the quality of service provided, not by the mechanism which provides it.

Agency response: The Agency will continue to monitor the developments in satellite technology and may consider modifying the restrictions on satellite provided broadband for future funding rounds.

Respondent 10: Respondent unequivocally supports the position stated in respondent 7’s letter against the proposed rule changing the definition of broadband to exclude satellite. In a state where zero school districts have the FCC recommended 1 Mbps per student capacity and

20% of Alaska residents have no broadband access other than satellite, Alaska would be irreparably harmed if the Department were to adopt the proposed rules that exclude satellite.

Agency response: To ensure that that all rural areas have sufficient bandwidth, the Agency will evaluate the eligibility and construction requirements every time a funding announcement is published. The bandwidth for both eligibility and construction will be set to ensure that all rural Americans have access to sufficient bandwidth. Applicants must ensure that all households in the proposed funded service area can receive the minimum bandwidth requirements at the same time.

Respondent 11: Respondent supports the interim funding rule and provides the following comments to improve upon the rules, as summarized below:

- Applicants should be allowed to pair their grants with loans from third parties, not just loans from RUS.
- “Broadband lending speed” should be modified to clarify that the initial broadband lending speed under these programs is “25/3 Mbps fixed terrestrial” and clarify the discussion of “eligible service area” to make it clear that initially any area with anything less than “25/3 Mbps fixed terrestrial” is eligible while prioritizing areas that lack access to at least 10/1.
- Mobile and satellite services should not be considered for purposes of determining eligible areas, nor should mobile broadband be included for purposes of “Broadband lending speeds” that may receive RUS funding.
- RUS should allow matching funding, whether in the form of cash or loan funds, to spread over the built-out period, rather than fully expended upfront before grant funding can be used.
- RUS should not require applicants to provide a competitive analysis of the market, because such analysis is not provided within the statute nor is such analysis necessary for purposes of carrying out the other provisions in the statute.

- RUS should allow applicants an opportunity to respond to challenges from existing service providers claiming to serve areas within the applicants' proposed funded service area; and should permit applicants to modify their application to respond to challenges. In any event, RUS should not exempt from disclosure the information that is presented in support of an existing service provider's claim. This one-way, opaque process invites abuse by existing service providers and prevents applicants from defending their proposals.

Agency response: Pairing grant funding with an RUS loan is a statutory requirement and cannot be modified at this time.

The broadband lending speed is designed to change with the ever-increasing bandwidth requirements that the public requires. The Agency will evaluate the broadband lending speed each time that a funding announcement is published and set this requirement accordingly.

The broadband program is technology neutral and any technology that can meet the broadband lending speed is eligible for consideration.

The amount of grant funds and the associated density calculations that can be applied for are statutory requirements and cannot be changed at this time.

The Agency will consider the recommendation to spread out matching requirements over the construction period but at this time, the requirement will remain that matching funds be expended first.

Through the Public Notice Response process, the Agency will conduct on-site review of the proposed service area to determine if adequate broadband exists. If an area of the proposed funded service area is found to be ineligible, the Agency will work with applicants to modify the proposed service area accordingly.

Once an offer of an award is extended to an applicant, the 5-year construction period starts once all closing conditions are satisfied and funds become available to the awardee.

Respondent 12: "Regardless of the specific needs of a locality, strong last-mile wireless broadband connectivity is a necessity for countless internet of things use cases the RUS seeks to

advance, such as smart agriculture deployments, and should be prioritized in Rural Broadband Program awards. RUS Enabled by new rules adopted by the Federal Communications Commission, new wireless technology that utilizes television white spaces (TVWS) has the demonstrated ability to exceed Rural Broadband Program thresholds in RUS' interim final rule, providing extended last-mile wireless connectivity that supports higher throughput. We strongly encourage RUS to ensure that the updated Rural Broadband Program's rules support applications utilizing TVWS technology deployments that will increase and improve broadband access to rural communities, consistent with Congress' intent in the Agricultural Act of 2018.”

Agency response: Fixed wireless broadband is an eligible technology as long as it can deliver the required broadband service to every household in the proposed service area at the same time.

The Agency evaluated the responsive comments and based on analysis and response to comments, we are adopting the interim rule without change.

List of Subjects

7 CFR Part 1738

Loan programs—communications, Rural areas, Telecommunications, Telephone.

7 CFR Part 1739

Grant programs—communications, Rural areas, Telecommunications, Telephone.

PART 1738—RURAL BROADBAND LOANS, LOAN/GRANT COMBINATIONS, AND LOAN GUARANTEES

PART 1739—BROADBAND GRANT PROGRAM

Accordingly, the interim rule amending 7 CFR parts 1738 and 1739, which was published at 85 FR 14393 on March 12, 2020, is adopted as final without change.

Andrew Berke,
Administrator,
Rural Utilities Service.

